



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 23, 2004

Ms. Alice Caruso
Assistant Disclosure Officer
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2004-5123

Dear Ms. Caruso:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203972.

The Texas Workforce Commission (the "commission") received a request for the claimant file of a named individual. You state that you have released most of the information in the file to the requestor; however, you claim that the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code, and Texas Rule of Evidence 503. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the commission's obligations under section 552.301 of the Government Code in seeking a ruling from this office. In accordance with section 552.301(b), a governmental body seeking a ruling from this office must assert the exceptions to disclosure that apply to the requested information no later than the tenth business day after receiving the written request. In addition, within fifteen business days of receiving the request, the governmental body is required to submit (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov't Code § 552.301(e)(1)(A).* The commission received the request for the submitted information on March 22, 2004. The commission did not request a ruling from this office or submit the items required by

section 552.301(e)(1)(A) until April 20, 2004. Pursuant to section 552.302 of the Government Code, the commission's failure to comply with section 552.301 results in the legal presumption that the information at issue is public and must be released.

In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ). Section 552.107 and Texas Rule of Evidence 503 do not constitute compelling reasons to withhold information in this instance. *See* Open Records Decision No. 676 at 11-12 (2002) (claim of attorney-client privilege under section 552.107 or Texas Rule of Evidence 503 does not provide compelling reason for purposes of section 552.302 if it does not implicate third party rights); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). In failing to comply with section 552.301, the commission has waived its claims under section 552.107 and Texas Rule of Evidence 503. *See* Gov't Code § 552.007; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). On the other hand, this office has held that a compelling reason exists to withhold information when the information is confidential by another source of law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). The applicability of section 552.101 is such a compelling reason.

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. This section encompasses information made confidential by other statutes. You claim that the requested information is excepted from disclosure pursuant to section 552.101 in conjunction with federal regulations. Section 603 of title 20 of the Code of Federal Regulations provides that "claim information" in the files of a state unemployment compensation agency may be disclosed only to a "receiving agency," as defined in the regulations, or to other specified parties. *See* 20 C.F.R. §§ 603.1 *et seq.*; *see also* Open Records Decision No. 476 at 4 (1987). Otherwise, pursuant to section 603.7 of title 20 of the Code of Federal Regulations, state unemployment compensation agencies, such as the commission, must protect the confidentiality of claim information. "Claim information" means information regarding whether an individual is receiving, has received, or has applied for unemployment compensation, as well as "[a]ny other information contained in the records of the State employment compensation agency which is needed by the requesting agency to verify eligibility for, and the amount of, benefits." 20 C.F.R. § 603.2(c)(1), (5). We also note that the names of employers and employees who file unemployment compensation appeals fall within the definition of "claim information" and that the federal regulations prohibit the commission from disclosing this information. *See* Open Records Decision No. 476 at 4 (1987).

You inform us that the federal Social Security Act requires states to comply with the directives of the United States Department of Labor (the "labor department") in

administering state unemployment insurance (“UI”) programs and that a labor department directive, UI Program Letter No. 34-97, specifies the conditions under which such claim information may be released. In this instance, the requestor has identified an unemployment claimant to whom the submitted information pertains. You state that the submitted information constitutes claim information. Based on your arguments and our review of the submitted information, we believe that the information contained in the commission’s records relate to whether the individual has received or applied for unemployment compensation. *See* 20 C.F.R. § 603.2(c)(1). Therefore, we conclude that, although the information at issue is confidential, it must be released if any of the release provisions in UI Program Letter No. 34-97 or part 603 of title 20 of the Code of Federal Regulations apply. *See* UI Program Letter 34-97(allowing disclosure to “private entity under a written agreement which requires ‘informed consent’ from the individual to whom the information pertains”); 20 C.F.R. pt. 603. Otherwise, the commission must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code and these federal provisions.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. David Floyd', with a long horizontal flourish extending to the right.

W. David Floyd
Assistant Attorney General
Open Records Division

WDF/sdk

Ref: ID# 203972

Enc. Submitted documents

c: Mr. Charles Mabry, II
Tom Carse
5930 Preston View Boulevard, Suite 202
Dallas, Texas 75240
(w/o enclosures)